

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TYLER J. QUINONES,

Plaintiff,

v.

Case No. 20-CV-429

TRACY THOMPSON *et al.*,

Defendants.

ORDER

Plaintiff Tyler J. Quinones, who is represented by counsel, filed an amended complaint on March 24, 2021. The defendants answered the amended complaint, (ECF No. 24), and moved to dismiss defendant Kettle Moraine Correctional Institution (KMCI). (ECF No. 24.)

Quinones brings claims against KMCI under 42 U.S.C. § 1983 under a theory of “*Monell*” liability. While § 1983 allows only for a plaintiff to sue a “person”, who acting under the color of state law, violates his constitutional rights, *Monell v. Dept. of Social Servs. of City of New York*, 436 U.S. 658 (1978), creates limited circumstances where a plaintiff may sue a municipality. Federal Rule of Civil Procedure 17(b) states that defendants in a federal lawsuit must have the legal capacity to be sued. State law determines an entity’s capacity to be sued. *Webb v.*

Franklin County Jail, Case No. 160cv01284, 2017 WL 914736 at *2 (S.D. Ill. Mar. 8. 2017).

Under Wisconsin law, KMCI is not a person, nor is it a separate legal entity that can be sued under §1983. See Louis v. Milwaukee County Jail, No. 17-cv-113-wed-pp, 2017 WL 3037567 at *2 (E.D. Wis. July 18, 2017) (citing Powell v. Cook Cty. Jail, 814 F. Supp. 757, 758 N.D. Ill. 1993)). KMCI is part of the Wisconsin Department of Corrections, which is a state agency. Claims against a state agency are “no different from a suit against the State itself,” so the court will construe the claims involving the DOC as claims against the State of Wisconsin. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989) (Citing *Graham* 437 U.S. at 165-166; *Monell*, 436 U.S. at 690 n. 55).

A state is not a “person” from whom a plaintiff can recover monetary damages under § 1983. *Lapides v. Bd. of Regents of the Univ. Sys. Of Ga.*, 535 U.S. 613, 617 (2002); *Williams v. Wisconsin*, 336 F.3d 576, 580 (7th Cir. 2003). A State may be considered a “person” under § 1983 where a plaintiff seeks injunctive relief and alleges that the State itself is responsible for the violation of his constitutional rights because of a practice, custom, or policy. *Will*, 491 U.S. at 71 n. 10; *Graham*, 473 U.S. at 166 (citing *Monell*, 436 U.S. at 694). Quinones seeks only monetary damages. Accordingly, the court will grant the defendants’ motion to dismiss KMCI.

IT IS THEREFORE ORDERED that the defendants’ motion to dismiss Kettle Moraine Correctional Institution (ECF No. 25) is **GRANTED**. Kettle Moraine Correctional Institution is **DISMISSED with prejudice**.

Dated at Milwaukee, Wisconsin this 19th day of May, 2021.

BY THE COURT:



NANCY JOSEPH
United States Magistrate Judge